

Internal Revenue Service

Number: **200839017**

Release Date: 9/26/2008

Index Number: 368.00-00, 368.06-00,
1361.00-00, 1361.01-04;

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-118659-08

Date:

June 24, 2008

Legend:

Taxpayer

StateX

Date1

Business1

Shareholders

Newco

Date2

Dear :

This letter is in reply to your authorized representative's letter dated April 17, 2008, requesting rulings regarding a proposed transaction.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Taxpayer is organized under the laws of StateX and is an S corporation that files its tax returns on a Date1 fiscal year on an accrual basis. Taxpayer is engaged in Business1.

All of the single class of common stock of Taxpayer is owned by Shareholders. For business reasons, Taxpayer wishes to convert under the laws of StateX to a limited liability company (LLC). The newly formed LLC (Newco) will elect under § 301.7701-3 to be treated as an association taxable as a corporation for federal tax purposes.

Taxpayer intends to undertake all of the above steps in the proposed transaction prior to Date2.

REPRESENTATIONS

Taxpayer has made the following representations in connection with the proposed transaction:

- (a) The fair market value of the LLC membership rights that the Shareholders will receive in the conversion will be equal to the fair market value of the Taxpayer shares that will be converted into LLC membership rights in connection with the conversion.
- (b) The Shareholders will receive no consideration other than LLC membership rights for their Taxpayer shares.
- (c) No Shareholder has any plan or intention to sell, exchange or otherwise dispose of any of the LLC membership rights that he or she will receive in the conversion.
- (d) Immediately after Taxpayer's statutory conversion, the Shareholders will own all of the outstanding membership rights of Newco as a StateX LLC and will own such rights solely by reason of their ownership of Taxpayer stock immediately prior to the conversion.
- (e) Immediately after Taxpayer's statutory conversion, Newco will continue to hold all of the assets and liabilities that it held as Taxpayer. No assets will be distributed and there will be no dissenting shareholders.
- (f) At the time of the statutory conversion, Taxpayer will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire an ownership interest in Taxpayer as a corporation or Newco as a LLC.
- (g) Taxpayer has no plan or intention to reacquire or redeem Taxpayer shares.
- (h) Newco has no plan or intention to reacquire or redeem any of its membership interests issued in the conversion.
- (i) Newco will issue no LLC membership rights except in exchange for Taxpayer shares.
- (j) Newco has no plan or intention to sell or otherwise transfer or dispose of any of the assets that it held as Taxpayer.
- (k) Under the StateX statute, Newco will be considered the same entity after the statutory conversion as before. Accordingly, in connection with the statutory

conversion, there will be no assignment, transfer or other change in Taxpayer's liabilities and Newco will assume no new liabilities.

(l) Following the statutory conversion, Newco will conduct the same business as it conducted as Taxpayer prior to the transaction.

(m) In connection with the statutory conversion, no Shareholder will incur any expense.

(n) Taxpayer is not presently under the jurisdiction of any court in a Title 11 case or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.

(o) Immediately after the statutory conversion, Newco will not be under the jurisdiction of any court in a Title 11 case or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.

(p) Newco's election under § 301.7701-3 to be treated as an association taxable as a corporation will be effective as of the date of the transaction such that Newco will never exist as a partnership for federal tax purposes.

RULINGS

Based solely on the information submitted and the representations as set forth above, we hold as follows:

- (1) The conversion of Taxpayer to Newco, a StateX LLC, followed by an election to be treated as an association taxable as a corporation for federal tax purposes effective as of the date of conversion, will qualify as a reorganization under section 368(a)(1)(F). Taxpayer and Newco will each be "a party to a reorganization" under section 368(b).
- (2) No gain or loss will be recognized by Taxpayer on the deemed exchange (section 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Newco on the deemed exchange (section 1032(a)). The basis of the assets of Taxpayer in the hands of Newco will be the same as the basis of such assets in the hands of Taxpayer immediately prior to the conversion (section 362(b)). The holding period of the Taxpayer assets held by Newco will include the period during which such assets were held by Taxpayer (section 1223(2)).
- (4) No gain or loss will be recognized by the Shareholders upon their exchange of Taxpayer shares for membership interests in Newco (section 354(a)). The basis of the membership interests in Newco received by the Shareholders will be the same as the basis of the shares of Taxpayer surrendered in exchange

therefor (section 358(a)(1)). The holding period of the membership interests to be received by the Shareholders will include the period during which the shares of Taxpayer surrendered therefor were held, provided that the shares are held as capital assets on the date of the exchange (section 1223(1)).

- (5) Taxpayer's S election will not terminate as a result of the reorganization under section 368(a)(1)(F) if Newco meets the requirements of an S corporation under section 1361. See Rev. Rul. 64-250, 1964-2 C.B. 333.
- (6) Newco will retain Taxpayer's previously assigned identifying number (EIN). See Rev. Rul. 73-526, 1973-2 C.B. 404.
- (7) Newco's Operating Agreement, once executed in a substantially identical form, will be considered a governing provision for purposes of § 1.1361-1(l)(2)(i), since it will be a binding agreement that defines the members' rights to distribution and liquidation proceeds. Further, the Newco Operating Agreement, once executed, does not, by its terms, create equity interests that would be treated as different classes of stock for purposes of section 1361(b)(1)(D) because it does not create different rights to current distribution or liquidation proceeds.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this ruling expresses no opinion regarding the existence of any other document or arrangement that could be considered a governing provision under § 1.1361-1(l)(2)(i). In addition, any arrangement that allows the owners to share in current distributions and liquidating proceeds in a manner that differs from their stated ownership percentage interests could potentially be considered to create a second class of stock.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

T. Ian Russell

T. Ian Russell
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: